



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2010

Mr. Matt Dobecka  
Contract Administrator  
Office of the Purchasing Agent  
County of Collin  
2300 Bloomdale Road, Suite 3160  
McKinney, Texas 75071

OR2010-14568

Dear Mr. Dobecka:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 395933.

Collin County (the "county") received a request for the following information pertaining to request for proposals number 04236-10: copies of the top three proposals based on price and a completed pricing comparison of all proposals. You indicate you have released some of the requested information. Although the county takes no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of the following third parties: Alternative Service Concepts, LLC ("ASC"), Gallagher Bassett Services, Inc. ("Gallagher"), and Tristar Risk Management ("Tristar"). Accordingly, you state, and provide documentation showing, the county notified these third parties of the county's receipt of the request for information and of their right to submit arguments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have submitted a document which you have designated as non-responsive. A portion of this document, however, is responsive to the request for a completed pricing comparison of all proposals. Therefore, we will review the responsive portion of this document. Furthermore, we note the requestor only seeks the "top three"

proposals. Accordingly, large portions of ASC's and Gallagher's proposals are not responsive to the instant request because those proposals are not among the "top three," as specified in the request. For the companies outside the "top three," the requestor only seeks pricing information. Therefore, any information other than pricing information in ASC's and Gallagher's proposals is not responsive to the instant request. This decision does not address the public availability of the non-responsive information, and the county need not release that information in response to this request.

We understand ASC, Gallagher, and Tristar to claim their pricing information is excepted from disclosure under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (2) "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(a)-(b).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . A trade secret is a process or device for continuous use in the operation of the business . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person's claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See Open Records Decision No. 552 at 5* (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the

definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.<sup>1</sup> Open Records Decision No. 402 (1983).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

We note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3 (1982). In this instance, none of the companies has provided arguments explaining how their pricing information constitutes a trade secret. Consequently, the county may not withhold any company's pricing information under section 552.110(a) of the Government Code.

We also note the pricing information of a winning bidder, such as Tristar, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Accordingly, the county may not withhold the pricing information in Tristar's proposal pursuant to section 552.110(b) of the Government Code. However, we determine the release of ASC's

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<sup>1</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

and Gallagher's pricing information, which we have marked, would likely result in substantial competitive injury to the companies. Therefore, this information must be withheld under section 552.110(b).

We note the remaining information in Tristar's proposal contains information that is subject to sections 552.101 and 552.136 of the Government Code.<sup>2</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Tristar's proposal includes sample documents which contain intimate or embarrassing information regarding named individuals. We note that names are not ordinarily subject to common-law privacy. See Open Records Decision No. 455 at 7 (1987) (names are not protected by privacy). In this instance, however, the public generally has a legitimate interest in the sample documents submitted by Tristar to the county. Therefore, to protect the named individuals' privacy, the county must withhold their names, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Therefore, the county must withhold the insurance policy numbers and bank account and routing numbers we marked in Tristar's proposal under section 552.136.<sup>3</sup>

In summary, the county must withhold ASC's and Gallagher's pricing information, which we have marked, under section 552.110(b) of the Government Code. The county must

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number, bank account number, and bank routing number under section 552.136, without the necessity of requesting an attorney general decision.

withhold the information we have marked in Tristar's proposal under section 552.101 of the Government Code in conjunction with common-law privacy. The county must also withhold the information we marked in Tristar's proposal under section 552.136 of the Government Code. The remaining responsive information must be released.<sup>4</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 395933

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Kevin M. Marrs  
Alternative Service Concepts, LLC  
1213 Cherry Brook Way  
Flower Mound, Texas 75028  
(w/o enclosures)

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<sup>4</sup>We note the remaining information in Tristar's proposal contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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